

Chapter XIV

PUBLIC EDUCATION AND OUTREACH

A. Overview of Function and Updated Data

As described in the *Initial Report*, MBC uses a number of methods to communicate with and educate consumers, licensees, and other stakeholders regarding the Board's enforcement program. Under the general direction of the Board's Public Education Committee, MBC's public information officer (PIO) and her staff are responsible for outreach to the public generally; while the enforcement program is charged with communicating with complainants, subject physicians, and others who become involved with MBC's discipline system.

■ ***Outreach to consumers and patients.*** The Board conducts public outreach and education to the general public in an effort to ensure that consumers know of the existence of the Board and how they can access the Board's services. MBC maintains a toll-free phone line for complaints,²⁶⁶ but not for general Board information or questions.²⁶⁷ Through its Web site, MBC provides consumers with easy access to information on the Board, its enforcement program,²⁶⁸ the disciplinary histories of California-licensed physicians,²⁶⁹ and numerous health care issues.²⁷⁰ The Board has

²⁶⁶ MBC's toll-free complaint line is (800) 633-2322.

²⁶⁷ To ask about a physician's record or obtain general information about the Medical Board, the public must call (916) 263-2382. MBC staff and the Public Education Committee have advocated a toll-free information line for consumers and licensees; due to budget constraints, that proposal has never been adopted or implemented.

²⁶⁸ MBC's Web site — www.medbd.ca.gov or www.caldocinfo.ca.gov — provides information on (1) how to file a complaint; (2) the types of complaints over which the Board has jurisdiction; (3) phone numbers for contacting the Board regarding a complaint; (4) links to MBC brochures on complaint handling, investigations, and medical consultants; and (5) a downloadable complaint form that a consumer may print, complete, and mail to the Board.

²⁶⁹ See *supra* Ch. XIII.A. See especially Ch. XIII.B.4., which documents MBC's major 2004 initiative to provide public access to the full text of enforcement-related public documents on its Web site.

²⁷⁰ By clicking on "Services for Consumers" on MBC's Web site, one can access fact sheets related to California physicians and medical marijuana, guidelines for prescribing controlled substances for pain, patient privacy protection, tips on choosing a doctor, Internet prescribing, how to order public documents from the Board, patient access to medical records, resources available for reduced-cost mammograms, specialty board advertising, and links to other MBC forms

created and distributed public service announcement (PSAs) in English and Spanish for both radio and television.²⁷¹ Subject to budget and staffing limitations, the Board engages in public outreach at consumer or healthcare events, and provides presentations about the Board to physician groups and other healthcare entities. Finally, the Board engages in outreach to consumers via the media; MBC routinely issues press releases to notify media of disciplinary actions taken by the Board, and these disciplinary actions are often reprinted in newspapers in the locality of the disciplined physician.

During 2005, MBC's public information officer and enforcement chief have taken advantage of every opportunity to participate in on-camera television interviews to educate the public on the dangers of seeking medical care from unlicensed practitioners. These segments have aired in English and Spanish in Los Angeles and Orange counties and in the Bay Area.

■ ***Outreach to Board licensees.*** The Board's primary vehicle for communicating with California physicians is the *Action Report*, a quarterly licensee newsletter that includes articles on medical issues of interest to physicians, updates on recent legislation, enforcement-related articles (including information on the Board's Diversion Program for substance-abusing physicians and its Expert Reviewer Program), and a summary of MBC disciplinary actions.²⁷² MBC's Web site also provides information directed towards its physician licensees. Under "Services for Licensees," a physician may find information related to the enforcement process in general,²⁷³ California physicians and medical marijuana, the Expert Reviewer Program, fictitious name permits, guidelines for prescribing controlled substances for pain, patient privacy, patient activity reports from the California Department of Justice, the Diversion Program, and links to various forms, fact sheets, and other MBC publications (including a list of publications that physicians are required by law to provide to patients under certain circumstances).

■ ***Outreach to mandated reporters.*** Business and Professions Code section 800 *et seq.* requires many entities — including malpractice insurers, employers of physicians, court clerks, coroners, hospitals, and physicians — to report certain information about physicians to the Board. As described in Chapter VI above, these mandated reporters are particularly valuable sources of

and publications.

²⁷¹ The PSAs, which advise consumers to choose only licensed physicians and to contact MBC if they have questions about the healthcare they have received, are available on the Board's Web site.

²⁷² The *Action Report* is posted on MBC's Web site.

²⁷³ During 2005, the Central Complaint Unit updated the Web site's description of the enforcement process for physicians; this explanation and an enforcement program flowchart may be accessed at www.medbd.ca.gov/Complaint_Process.htm.

information that assists MBC in detecting physician misconduct warranting discipline — including section 2220.05 priority cases.²⁷⁴ Although MBC has posted easily-downloadable reporting forms for all mandated reporters on its Web site, some mandated reporters do not always file required reports with the Board, and/or do not fully comply with their reporting responsibilities.²⁷⁵

In the *Initial Report*, the importance of these mandated reporters and the Board's outreach to them were the subject of several Monitor recommendations, some of which have been implemented. As described in Chapter VI,²⁷⁶ SB 231 (Figueroa) has amended Business and Professions Code section 802 to require physicians to self-report medical malpractice judgments in excess of \$30,000; amended section 802.1 to require physicians to self-report certain misdemeanor criminal convictions; and amended section 805.2 to require expedited completion of the peer review study that is intended to improve hospital and HMO reporting of adverse peer review actions. The Department of Consumer Affairs is in the process of implementing an educational program with the Judicial Council aimed at improving court clerk compliance with state laws requiring them to report criminal convictions and civil malpractice judgments against physicians. MBC's enforcement program has made a concerted effort to educate California's coroners regarding their reporting responsibilities under section 802.5. All of those efforts should be continued, and much work — both legislative and administrative — remains to be done to improve insurer/employer reporting of medical malpractice settlements under sections 801, 801.1, and 803.2.

■ ***Outreach to prospective expert reviewers.*** As noted above in Chapter VIII, outreach to physicians who may be willing to serve as expert reviewers is handled primarily through notices in the *Action Report* newsletter and information regarding these positions is posted on the MBC Web site. Additionally, Board members and enforcement program representatives occasionally make presentations to hospital staffs, local and specialty medical societies, and other physician organizations to recruit prospective experts.

■ ***The enforcement program's outreach to complainants and subject physicians.*** In the *Initial Report*, the Monitor noted that MBC — in response to poor results in past consumer satisfaction surveys — took steps to improve its effectiveness in communicating with complainants to its enforcement program. MBC now sends an acknowledgment letter when a complaint is received, and includes a brochure entitled *How Complaints Are Handled*, an overview of the steps taken in processing complaints. MBC next notifies the complainant when medical records are being reviewed by a medical consultant, and includes its brochure entitled *Most Asked Questions About*

²⁷⁴ See *supra* Ex. VI-A, Ex. VI-B.

²⁷⁵ See *supra* Ch. VI.B.5.

²⁷⁶ *Id.*

Medical Consultants to explain that part of the process. When that consultant makes findings, MBC mails a letter to the complainant explaining those findings. If the complaint is referred for investigation, the complainant is again notified and mailed another brochure entitled *Questions and Answers About Investigations*. Thereafter, the complainant is notified if an accusation is filed. If the case is closed, the consumer is informed of the reasons for closure and the manner in which that decision may be appealed.

Although MBC has improved its communications with complainants throughout the enforcement process, it was less successful in consistently communicating with subject physicians. This issue was the subject of two Monitor recommendations whose implementation is discussed below.

B. The Monitor's Findings and MBC/Legislative Responses

The following summarizes the Monitor's *Initial Report* findings and concerns about MBC's public education and outreach program, and documents the responses to those findings implemented by the Medical Board during 2005. More detail on each of the findings is available in Chapter XIV of the *Initial Report*.²⁷⁷

1. Physicians are not required to provide patients with information about the existence of the Board and its disciplinary jurisdiction.

In the *Initial Report*, the Monitor noted that many other regulatory agencies — including health care-related agencies — require their licensees to provide customers or clients with information about their licensing board, its regulatory authority, and its contact information. Depending on the agency, this notice may be provided in a variety of nonintrusive ways — through brochures, posted notices, or statements on invoices and/or other documents that are given to the customer or client. However, the Medical Board has never imposed a similar requirement on physicians. During prior discussions of this issue, some Board members have noted that MBC's depleted staff can barely keep up with its current caseload, and have expressed concern about the capability of MBC's enforcement program to handle the surge of patient complaints which may result if MBC imposes a similar requirement on physicians.

To a certain extent, these Board members have a point. Although Exhibit VI-A indicates that patients are the source of the vast majority of MBC complaints, it also demonstrates that few patient complaints are referred for investigation and/or result in disciplinary action. On the other hand, Exhibit VI-B indicates that — in raw numbers — patients were the top source of section 2220.05

²⁷⁷ *Initial Report*, *supra* note 13, at 230–32.

priority complaints resulting in disciplinary action taken between January 1, 2003 and June 30, 2005. Exhibit VI-B and its explanatory notes also indicate that MBC itself is the “source” of a large number of priority complaints resulting in disciplinary action; in many of those complaints, a Board investigator looking into a particular matter checked the Civil Index and found civil malpractice lawsuits filed against the subject physician by patients who had not filed a complaint with MBC. It seems clear that many California citizens do not know of the existence of the Medical Board, and that MBC is not educating patients sufficiently on the kinds of matters they should bring to MBC’s attention. In Recommendation #53, the Monitor suggested that MBC sponsor legislation requiring physicians to inform patients about the Medical Board’s existence, disciplinary jurisdiction, address, and toll-free complaint number.

Neither MBC nor the Legislature took action on this recommendation during 2005. Although this is understandable due to the press of other higher-priority issues (including the needed fee increase and the fundamental structural change to a vertical prosecution model), this issue should find its way onto the agendas of MBC and its Public Education Committee during 2006. Many California agencies manage their caseloads while still meeting their obligation to help the public seek redress of legitimate grievances. As reflected in Chapter V,²⁷⁸ the number of complaints and reports to MBC has decreased over the past three or four years — which may be a product of inadequate public outreach. The Monitor believes that, as a matter of sound public policy, the Medical Board should make better efforts to meet its obligation to assist victims of medical wrongdoing in understanding how to be involved with its enforcement program.

2. The Board does not communicate consistently with physicians during the complaint review and investigative process.

As noted above, the Medical Board has made a concerted effort to improve its communications with complainants throughout the complaint handling process, but has been somewhat inconsistent in ensuring that physicians are notified of the status of complaints against them — partly because its various procedure manuals were inconsistent on this point. In Recommendations #20 and #54, the Monitor urged MBC to clarify its procedure manuals and ensure that subject physicians are notified when complaints against them are closed.

As described in Chapters VI²⁷⁹ and VII²⁸⁰ above, MBC has revised its *CCU Procedure Manual* and its *Enforcement Operations Manual* to require CCU and its district offices to notify a

²⁷⁸ See *supra* Ch. V.A; see also Ex. V-B, Ex. V-C.

²⁷⁹ See *supra* Ch. VI.B.8.

²⁸⁰ See *supra* Ch. VII.B.10.

subject physician who has been contacted by CCU or field staff during complaint processing of the closure of that complaint.

3. MBC should communicate with local county medical societies about their obligations under Civil Code section 43.96.

Civil Code section 43.96 requires medical societies, hospitals, and local government agencies that receive a written complaint against a physician to affirmatively notify the complainant that they have no jurisdiction over the physician's license, and that only MBC may discipline a physician's license. Further, the local entity must "provide to the complainant the address and toll-free telephone number" of the Board. In researching the *Initial Report*, the Monitor checked a number of Web sites of county medical societies. A few of them that offer "complaint processes" state in bold print that the medical society has no authority to require a physician to follow its recommendation or to take action against a physician's license; those sites provide MBC's address and toll-free number. Others make no such statement. Because some of these organizations with the word "county" in their name offer "complaint processes," consumers sometimes confuse them with the Medical Board and fail to file a complaint with the only entity that can protect the public from a dangerous physician. In Recommendation #55, the Monitor suggested that MBC periodically communicate with local county medical societies and remind them of their obligations under section 43.96.

During March 2005, MBC's public information officer (PIO) responded to this recommendation by checking the Web sites and/or otherwise contacting all 58 local county medical societies. According to MBC, all but two societies are in compliance with section 43.96. The PIO sent letters to those two societies setting forth the requirements of section 43.96.

C. Recommendations for the Future

■ ***Required notice to consumers regarding the Board's existence and disciplinary jurisdiction.*** Consistent with the practice at many other California regulatory agencies, the Medical Board should require its licensees to provide their patients with some form of affirmative notice concerning the Board's existence, jurisdiction, toll-free complaint number, and Web site address. MBC's complaint intake has decreased over the past several years, and this may be due to inadequate public outreach.

■ ***Continued outreach efforts directed at mandated reporters.*** MBC should continue its outreach efforts to individuals and institutions who are mandated reporters under Business and Professions Code section 800 *et seq.*, as these reporters are valuable sources of complaints and reports that lead to detection, investigation, and disciplinary action in priority complaints under Business and Professions Code section 2220.05.